

BEFORE THE TENNESSEE REGULATORY AUTHORITY

Nashville, Tennessee 37203 88 JAN 27 PM 4 12

January 27, 1998

In Re: *BellSouth Telecommunications, Inc.'s Entry Into Long Distance (InterLATA) Service in Tennessee Pursuant to Section 271 of the Telecommunications Act of 1996*

Docket No. 97-00309

REPORT AND RECOMMENDATION OF HEARING OFFICER
ON JANUARY 22, 1998, STATUS CONFERENCE

I. HISTORY OF CASE

Prior to the passage of the federal Telecommunications Act of 1996 (the "Act") in February of 1996, Bell Operating Companies ("BOCs"), such as BellSouth Telecommunications, Inc. ("BellSouth"), were prohibited from entry into the in-region long distance (interLATA) market. Under this prohibition, BellSouth could not provide long distance services in Tennessee. Section 271 of the Act, however, provides that BOCs may gain entry into the in-region long distance market by meeting the criteria set forth therein and obtaining the approval of the Federal Communications Commission ("FCC"). Before making any determinations under Section 271 of the Act, the FCC must consult with the State commission of the State that is the subject of the application. 47 U.S.C. § 271(d)(2)(B).

Cognizant of their consultative role under Section 271 of the Act, and in an effort to hasten the development of competition in the telecommunications market in Tennessee, on March 4, 1997, at a regularly scheduled Conference, the Directors of the Tennessee Regulatory Authority ("TRA") instituted a Formal Inquiry (the "Inquiry") for the purpose of determining the compliance of BellSouth with the criteria and procedures set forth in the Act

for entry into the in-region long distance (interLATA) markets in Tennessee.¹ At that same Conference, the Directors appointed Director Melvin Malone as the Hearing Officer for the purpose of presiding over any pre-hearing or status conferences, resolving discovery issues, and such other matters as may aid in the disposition of the action. Any hearing on the merits will be before the Directors of the TRA.

The first Status Conference in this matter was held on April 3, 1997, for the purposes of defining the specific factual, legal, and policy issues to be considered in this Inquiry, determining the extent and means of obtaining additional information in aid of this Inquiry, and establishing the procedural framework for this Inquiry. The Report and Recommendation of Hearing Officer on April 3, 1997, Status Conference (hereinafter referred to as the "First Report and Recommendation") was issued by the Hearing Officer on April 18, 1997. The Directors of the TRA unanimously adopted and approved the First Report and Recommendation on April 29, 1997.²

Under the Act, the decision of when to apply for Section 271 approval with the FCC is in the sole discretion of the BOCs. Among others things, the First Report and Recommendation reflected that BellSouth voluntarily agreed to provide the TRA at least ninety (90) days' advance notice before filing its Section 271 application with the FCC. *First Report and Recommendation at 6.* On December 12, 1997, BellSouth filed its Notice of Filing, together with supporting documentation and testimony, with the TRA. According to

¹ The Order Instituting Formal Inquiry and Adopting Procedure was entered on March 21, 1997. It should be noted here that on December 17, 1996, the Directors of the TRA requested the TRA Staff to conduct an informal investigation into BellSouth's entry into the long distance market in Tennessee. Comments received from the Consumer Advocates Division, BellSouth, and certificated facilities-based providers of local telephone service in Tennessee were included in the TRA Staff's Informal Investigation and Report, which was submitted to the Directors on February 18, 1997.

² Copies of the Order Adopting Report of Hearing Officer and the First Report and Recommendation are attached hereto as Collective **Exhibit A**.

the First Report and Recommendation and the aforementioned agreement of BellSouth, it appears that the earliest that BellSouth intends on filing its Section 271 application with the FCC is March 12, 1998, ninety (90) days from December 12, 1997.

II. SECOND STATUS CONFERENCE

a. Parties Present

A second Status Conference was held in this matter on January 22, 1998. The following appearances were entered:

BellSouth Telecommunications, Inc. - **Guy Hicks**, Esquire, 333 Commerce Street, Suite 2101, Nashville, TN 37201, and **Bennett Ross**, Esquire, 675 West Peachtree Street, Suite 4300, Atlanta, GA 30375;

NextLink - **Dana Shaffer**, Esquire, 105 Malloy Street, #300, Nashville, TN 37201;

LDDS WorldCom and LCI International - **H. LaDon Baltimore**, Esquire, Farrar & Bates, 211 Seventh Avenue North, Suite 320, Nashville, TN 37219-1823;

Time Warner Communications of the Mid South, L.P. - **Charles B. Welch**, Esquire, Farris, Mathews, Gilman, Branan & Hellen, PLC, 511 Union Street, Suite 2400, Nashville, TN 37219;

American Communications Systems, Inc. ("ACSI") - **Henry Walker**, Esquire, Boulton, Cummings, Conners & Berry, 414 Union St., #1600, P. O. Box 198062, Nashville, TN 37219-8062;

MCI Telecommunications Corporation - **Susan Berlin**, Esquire, 780 Johnson Ferry Road, Suite 700, Atlanta, GA 30342, and **Jon E. Hastings**, Esquire, Boulton, Cummings, Conners & Berry, 414 Union St., #1600, P. O. Box 198062, Nashville, TN 37219-8062;

AT&T Communications of the South Central States, Inc. ("AT&T") - **James Lamoureux**, Esquire, 1200 Peachtree St., NE Atlanta, GA 30309;

Consumer Advocate Division, Office of the Attorney General - **Vance Broemel**, Esquire, 426 5th Avenue, N., 2nd Floor, Nashville, TN 37243.

Sprint Communications - **Carolyn Tatum Roddy**, Esquire, 3100 Cumberland Circle, N0802, Atlanta, GA 30339;

BellSouth Long Distance, Inc. - **Guilford Thornton**, Esquire, Stokes & Bartholomew, 424 Church Street, Nashville, TN 37219;

TCG MidSouth, Inc. - **D. Billye Sanders**, Esquire, Waller, Lansden, Dortch, & Davis, 511 Union St., #2100, Nashville, TN 37219-1750;

Intermedia Communications - **Enrico C. Soriano**, Esquire, Kelley, Drye & Warren, 1200 19th Street, N.W., Suite 500, Washington, D.C. 20036;³

Communication Workers of America, AFL-CIO - **Donald L. Scholes**, Esquire, Branstetter, Kilgore, Stranch & Jennings, 227 Second Ave. North, Nashville, TN 37219.

b. Petitions to Intervene

The following petitions to intervene were pending before the Hearing Officer at the second Status Conference: (1) Petition to Intervene of TCG MidSouth, Inc.; (2) Petition to Intervene of Communication Workers of America, AFL-CIO; and (3) Petition to Intervene of the Telecommunications Resellers Association. Without objection, the Hearing Officer granted the petitions to intervene.

c. Motions

The following motions were pending before the Hearing Officer at the second Status Conference: (1) AT&T's Motion to Dismiss; (2) NextLink's Motion to Delay Further Proceedings Until After Completion of the "Permanent Pricing" Docket; and (3) AT&T's Motion for Leave to Conduct Written Discovery.

³ Without objection, Mr. Soriano participated telephonically.

(i) **AT&T's Motion to Dismiss**

AT&T argued its Motion to Dismiss and all parties were given the opportunity to comment thereupon. AT&T contended that BellSouth's Statement of Generally Available Terms ("SGAT") should be denied or dismissed because the SGAT does not contain cost-based prices/rates, because a "virtually identical" SGAT filed by BellSouth in its Section 271 South Carolina application before the FCC was rejected by the FCC, and because BellSouth, in AT&T's opinion, is foreclosed from pursuing entry into the long distance market in Tennessee under Track B of Section 271(c)(1). Further, AT&T contended that the TRA should conclude that BellSouth has not met the requirements of the Competitive Checklist set forth in Section 271(c)(2)(B) because the FCC made such a finding in its review of BellSouth's Section 271 South Carolina application and because there are no cost-based prices/rates for BellSouth in Tennessee. AT&T maintained that the TRA should make a determination that this proceeding should be dismissed on the basis that BellSouth cannot proceed under either Track A or Track B of Section 271(c)(1). Finally, AT&T requested that the TRA dismiss this Section 271 proceeding in its entirety because a substantially similar filing was denied by the FCC in its review of BellSouth's Section 271 South Carolina application and due to the lack of cost-based prices/rates.

For its cause, and in opposition to AT&T's Motion to Dismiss, BellSouth contended that Track A is open to BellSouth because of the presence and activities of MCI Metro, Sprint PCS, and PowerTel in Tennessee. BellSouth argued that it would be inappropriate at this stage for the TRA to make a threshold or summary judgment type of determination with regard to Track A availability without a hearing. *BellSouth Telecommunications, Inc.'s*

Proposed Statement of Issues and Comments at 5-6. Also, BellSouth maintained that “there is no reason why the TRA should delay consideration of BellSouth’s SGAT or its entry into long distance until the Permanent Price proceeding has been completed.” *Id. at 7.* BellSouth urged the TRA to approve the terms and conditions of the SGAT “subject to the condition and understanding that the final prices approved by the TRA in the Permanent Price proceeding will promptly be incorporated into the SGAT.” *Id. See also Transcript of Proceedings, Docket No. 97-00309, January 22, 1998, Status Conference at 24 (hereinafter “Transcript”).* BellSouth does not deny that the Act requires cost-based prices/rates before approval of an SGAT. *Transcript at 8.* Still, BellSouth does not think it necessary for this proceeding to come to a halt due solely to the lack of cost-based prices/rates.

First, with respect to AT&T’s contentions that the TRA should dismiss this Section 271 proceeding in its entirety because a substantially similar filing was denied by the FCC in its review of BellSouth’s South Carolina Section 271 application, that the TRA should not approve or should dismiss BellSouth’s Tennessee SGAT because a “virtually identical” SGAT was recently rejected by the FCC, and that the TRA should conclude that BellSouth has not met the requirements of the Competitive Checklist because the FCC made such a finding in its review of BellSouth’s Section 271 South Carolina application, the Hearing Officer, at this point in time, finds them untenable.

While not much time passed between the FCC’s ruling on BellSouth’s Section 271 South Carolina application on December 24, 1997, and the filing of BellSouth’s final SGAT in Tennessee on January 16, 1998, a considerable amount of time passed between BellSouth’s filing of its Section 271 South Carolina application with the FCC and the filing of

its final SGAT in Tennessee. Further, AT&T's arguments here are based upon the assertion that BellSouth's Tennessee SGAT is the same as its South Carolina SGAT. But, AT&T admitted at the second Status Conference that it understands that BellSouth has modified the Tennessee SGAT and that AT&T has "not yet had the opportunity to sit down and review that to acknowledge whether or not that is the case." *Transcript at 31*. This admission coupled with BellSouth's assertions that the Tennessee SGAT is materially different from the rejected South Carolina SGAT suggests that AT&T's arguments here are premature.⁴

Next, with respect to AT&T's argument that the TRA should make the threshold determinations of whether BellSouth can proceed under either Track A or Track B in Tennessee, AT&T and BellSouth commenced this discussion at totally opposite ends of the spectrum. While AT&T opined that said threshold determinations could be made without a hearing, BellSouth argued that it would be inappropriate to proceed to decisions with respect to Track A and Track B without a hearing. At this stage, it is the opinion of the Hearing Officer that the record is not sufficiently developed for the TRA to make a determination as to whether BellSouth can proceed under Track A. At the conclusion of this limited discussion, AT&T did not object to a hearing, at least with respect to a Track A determination, and BellSouth maintained that there should be a "comprehensive hearing" on all the issues, including Track A, Track B, the SGAT, and the Competitive Checklist.

⁴ At the second Status Conference, counsel for BellSouth stated that the Tennessee SGAT is very different from the SGAT that the FCC rejected in its review of BellSouth's Section 271 South Carolina application. *Transcript at 35-39*. Also, in *BellSouth Telecommunications, Inc.'s Notice of Filing, January 16, 1998*, with the TRA, BellSouth stated that "Although BST anticipated that the Final Statement would be identical to the draft Statement that was filed on December 12, 1997, the Statement has been revised to address certain issues raised by the FCC in its recent decision in In re: Application of BellSouth Corporation, et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in South Carolina, CC Docket 97-208 (FCC, Dec. 24, 1997) (hereinafter 'FCC BellSouth-South Carolina Order'). The Statement also has been revised to incorporate performance measurement requirements recently imposed upon BST by the Georgia Public Service Commission[.]"

Transcript at 41-42. Hence, at this stage of the proceeding, it appears that any evaluation of BellSouth's compliance with Section 271(c) of the Act in Tennessee should involve a comprehensive hearing on all Section 271(c) issues, including Track A and Track B issues.⁵

Thus, the only remaining issue with respect to AT&T's Motion to Dismiss is whether the lack of cost-based prices/rates mandates that the TRA dismiss BellSouth's SGAT and/or this proceeding. On January 16, 1998, BellSouth filed its final SGAT with the TRA in this proceeding. In this filing, BellSouth stated that the final SGAT was filed pursuant to 47 U.S.C. § 252(f) of the Act. Section 252(f) of the Act provides:

(f) STATEMENTS OF GENERALLY AVAILABLE TERMS.-

(1) IN GENERAL.- A Bell operating company may prepare and file with a State commission a statement of the terms and conditions that such company generally offers within that State to comply with the requirements of section 251 and the regulations thereunder and the standards applicable under this section.

(2) STATE COMMISSION REVIEW.- A State commission may not approve such statement unless such statement complies with subsection (d) of this section and section 251 and the regulations thereunder. . . .

(3) SCHEDULE FOR REVIEW.- The State commission to which a statement is submitted shall, not later than 60 days after the date of such submission-

(A) complete the review of such statement under paragraph (2) (including any reconsideration thereof), ***unless the submitting carrier agrees to an extension of the period for such review***; or

(B) permit such statement to take effect. (emphasis added).

According to the above statute, any SGAT submitted to the TRA by BellSouth must be acted upon within sixty (60) days unless BellSouth agrees to an extension of the period for such

⁵ The FCC has commented in several orders that in order to fill their consultative roles under Section 271 "as effectively as possible, state commissions should conduct proceedings to develop a comprehensive factual record concerning BOC compliance with the requirements of section 271 and the status of local competition." FCC BellSouth-South Carolina Order at 16. See also cf. FCC BellSouth-South Carolina Order (Separate Statement of Commissioner Michael K. Powell) ("In the past, there has been an inclination to fight the section 271 battle at the Track A/B 'shore.' Such an approach wastes time and resources, detracts from the thoroughness of our checklist analysis and clouds the guidance that incumbents and competitors alike desperately need.").

review. Further, and also according to the above statute, prior to the approval of any SGAT, the TRA must make a determination that said SGAT complies with subsection (d) of Section 252 of the Act. Subsection (d) of Section 252 of the Act provides that rates or charges for interconnection and network elements must be “based on the cost . . . of providing the interconnection or network element.” Hence, any SGAT submitted to the TRA by BellSouth must, under law, contain cost-based prices/rates prior to approval.

Since, in the opinion of the Hearing Officer, any SGAT submitted to the TRA by BellSouth must, under law, contain cost-based prices/rates prior to approval, BellSouth’s request for “conditional” approval must fail as a matter of law. Such a conditional approval would clearly violate the language of Section 252(f)(2).

As noted earlier, BellSouth filed its SGAT with the TRA on January 16, 1998. It is undisputed that the SGAT does not contain cost-based prices/rates. In fact, the SGAT submitted by BellSouth could not contain cost-based prices/rates because the TRA has not established cost-based prices/rates for BellSouth in Tennessee. Moreover, a review of the schedule that has been adopted by the TRA in Docket Number 97-01262, *In Re: Petition to Convene a Contested Case Proceeding to Establish “Permanent Prices” for Interconnection and Unbundled Network Elements* (hereinafter the “Permanent Prices Case”), reveals that the TRA will more than likely not establish cost-based prices/rates in Tennessee for BellSouth prior to June 2, 1998.⁶ While the Act requires that the TRA act upon BellSouth’s SGAT on

⁶ It should be noted here that an October 1, 1997, Report and Recommendation in the TRA Permanent Prices Case (Docket No. 97-01262), which Report and Recommendation was adopted and approved by the Directors on October 10, 1997, reflects that the TRA contemplated reaching a final decision in the Permanent Prices Case on or about February 3, 1998. Due, however, to a longer than expected hearing on the merits and BellSouth’s submittance of a revised cost study on December 12, 1997, a new procedural schedule was adopted.

or before March 17, 1998, which is sixty (60) days after the filing of the SGAT, the schedule adopted in the TRA's Permanent Prices Case establishes that cost-based prices/rates will not be set on or before March 17, 1998.⁷ Therefore, absent an extension of the period required for approval, the TRA, as a matter of law, would have no choice on March 17, 1998, but to disapprove and/or dismiss BellSouth's SGAT or permit the SGAT to take effect without action.

Subsequent to a recess in the second Status Conference, counsel for BellSouth indicated that BellSouth may desire to agree to extend the sixty (60) day period for review under Section 252(f)(3)(A). *Transcript at 60*. Counsel for BellSouth, however, stated that BellSouth would be reluctant to extend said date indefinitely. *Id.*

It is the opinion of the Hearing Officer that AT&T's Motion to Dismiss the SGAT for lack of cost-based prices/rates should be denied at this time because the period for review under Section 252(f) has not expired and BellSouth apparently seeks, or may seek, an agreement to extend the sixty (60) day period for review pursuant to Section 252(f)(3)(A).

It is undisputed that Section 252(f)(3)(A) provides for an extension of the period for the review of the SGAT. Although it could be argued that said extension is intended to apply only in situations under which the state commission is for some reason(s) unable to complete its review of a "complete when filed" SGAT within sixty (60) days, this, in the opinion of the Hearing Officer, is not the only reasonable interpretation of the language. As the Hearing Officer has concluded in this case, the extension may apply in other instances as well, including, but not limited to, where the submitting carrier requests, or agrees to, an extension

⁷ BellSouth acknowledged at the second Status Conference that cost-based prices/rates will not be established in Tennessee on or before March 17, 1998. *Transcript at 9*.

for reasons not contrary to the plain language of Section 252(f), not prejudicial to other interested parties, and not inconsistent with the public interest.

In light of the comments expressed by BellSouth near the close of the second Status Conference, the Hearing Officer has concluded that because the sixty (60) day period for review of the SGAT under Section 252(f) has not expired, because BellSouth has expressed a strong likelihood that it will seek an extension under Section 252(f)(3)(A), and since there has been no showing that such an extension would be contrary to the plain language of Section 252(f), prejudicial to other interested parties, or inconsistent with the public interest, the Motion to Dismiss the SGAT should be denied at this time.⁸

With an aim towards judicial economy and efficiency, the Hearing Officer hereby requests that BellSouth express in writing to the TRA on or before noon, January 30, 1998, whether it seeks to extend the period for review of its SGAT.⁹ If BellSouth, as intimated by its counsel, seeks to extend the period of review until such time as the TRA issues a final written order in TRA Docket Number 97-01262, *In Re: Petition to Convene a Contested Case Proceeding to Establish "Permanent Prices" for Interconnection and Unbundled Network Elements*, it is the opinion of the Hearing Officer that such extension should be accepted. If BellSouth declines to seek such an extension and does not agree to the same, then it is the opinion of the Hearing Officer that the TRA will be left with no option but to

⁸ In fact, accepting an extension, if one is requested, would result in the TRA and the parties in this case having more time to review BellSouth's SGAT than they would have if the SGAT is dismissed.

⁹ If BellSouth chooses to file such a document, it should be served on all parties of record via facsimile or hand delivery.

dismiss BellSouth's SGAT as a matter of law, as the TRA is statutorily barred from approving an SGAT that does not contain cost-based prices/rates.¹⁰

Therefore, after carefully considering AT&T's Motion to Dismiss in full, BellSouth's Proposed Statement of Issues and Comments, the comments of the parties made during the second Status Conference, and the entire record in this proceeding, and after reviewing and studying this matter further subsequent to the second Status Conference, the Hearing Officer recommends that AT&T's Motion to Dismiss should be denied.

(ii) NextLink's Motion to Delay

NextLink argued its Motion to Delay and all parties were given the opportunity to comment thereupon. In its Motion to Delay, NextLink contended that this Section 271 proceeding should be delayed until cost-based prices/rates, as required under the Act, are established in Tennessee. NextLink argued that until the TRA establishes cost-based prices/rates in Tennessee BellSouth is unable to meet the requirements of certain portions of the Competitive Checklist. It was NextLink's opinion that continuing this proceeding without cost-based prices/rates would be futile. In sum, BellSouth responded by arguing that the TRA should proceed with its review and approval of BellSouth's SGAT with the condition and understanding that the final cost-based prices/rates approved by the TRA in the Permanent Prices Case would be promptly incorporated into the SGAT, and that there is no reason to delay this proceeding.

¹⁰ It follows from the opinions and recommendations set forth herein that AT&T's Motion to Dismiss this Section 271 proceeding in its entirety for lack of cost-based prices/rates should be denied. Even if the TRA dismisses BellSouth's SGAT, unlike some parties, the Hearing Officer, at this time, is not persuaded that a dismissal of the SGAT is tantamount to a dismissal of this entire Section 271 proceeding.

For the same reasons set forth with respect to the conclusions reached by the Hearing Officer on AT&T's Motion to Dismiss, the Hearing Officer recommends that the TRA deny NextLink's Motion to Delay at this time. Additionally, the Hearing Officer recommends that NextLink's Motion to Delay be denied for the reasons set forth below.

While NextLink's motion has merit and was well-argued by its counsel, the Hearing Officer has concluded that granting the motion may constitute an encroachment upon matters that the Act leaves to the discretion of the BOCs, here BellSouth. For instance, NextLink requests the following in its motion:

[T]he TRA should suspend the filing of testimony and the proposed hearing until the agency has completed the Permanent Pricing docket. After that time, BellSouth should be required to refile its Section 271 application which will presumably incorporate the TRA's findings in the Permanent Pricing docket. BellSouth's revised filing should be submitted at least sixty to ninety days before BellSouth files the application with the FCC to give the TRA adequate time to evaluate the application and make a determination as to BellSouth's compliance with Section 271(c) at the time of BellSouth's actual filing with the FCC.

NextLink's Motion to Delay Further Proceedings Until After Completion of the "Permanent Pricing" Docket at 3. Since the Act establishes that BellSouth is the master of its fate with respect to the time it chooses to file its Section 271 application, the Hearing Officer is reluctant, without agreement from BellSouth, to recommend that the TRA proceed in the manner suggested by NextLink. Thus, the Hearing Officer recommends that the Motion to Delay be denied for this additional reason as well.

(iii) AT&T's Motion for Leave to Conduct Written Discovery

As noted above, also pending before the Hearing Officer at the second Status Conference was AT&T's Motion for Leave to Conduct Written Discovery. Recognizing that

a substantial amount of activity related to Section 271 has occurred since the first Status Conference, and seeing no prejudice to any party, the Hearing Officer recommends that written discovery be allowed in this matter and that any and all responses to discovery requests be filed with the TRA and served on all parties of record. At the second Status Conference, BellSouth objected to the scope and nature of some of the discovery requests propounded by AT&T. BellSouth's objections were well-taken, and AT&T agreed to review its discovery requests in an attempt to streamline the same.

Notwithstanding the above, given the uncertainty surrounding this proceeding at this time, the Hearing Officer advised the parties that discovery should not proceed until after the Directors have acted upon this Report and Recommendation.

d. Status of Proceeding

Should the Directors of the TRA adopt this Report and Recommendation, the direction that this proceeding takes in the immediate future is, in large part, within the discretion of BellSouth. In its Statement of Issues, even BellSouth concedes that "it may be appropriate to discuss certain refinements to the § 271 schedule referenced in the April 18 Report and Recommendation of the Hearing Officer[.]" *BellSouth Telecommunications, Inc.'s Proposed Statement of Issues and Comments at 6.* In light of the pending motions and with recognition that the procedural schedule set forth in the First Report and Recommendation required that testimony be filed on January 27, 1998, the Hearing Officer suspended the procedural schedule in this matter. If the Directors adopt and approve this Report and Recommendation, the Hearing Officer recommends that the Directors declare the procedural schedule set forth in the First Report and Recommendation void. But, for all

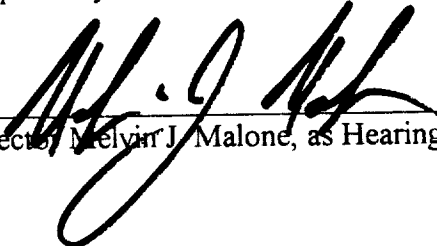
other purposes, the Hearing Officer recommends that the First Report and Recommendation remain in effect.

Assuming that BellSouth will, consistent with the comments made by its counsel at the second Status Conference, seek to extend the period for review under Section 252(f), the Hearing Officer has attached, as **Exhibit B** to this Report and Recommendation, a proposed procedural schedule.

IV. SUMMARY OF RECOMMENDATIONS OF HEARING OFFICER


1. Deny AT&T's Motion to Dismiss;
2. Deny NextLink's Motion to Delay;
3. Grant AT&T's Motion for Leave to Conduct Written Discovery in part; and
4. Void the procedural schedule set forth in the First Report and Recommendation.

Respectfully submitted,



Director Melvin J. Malone, as Hearing Officer

ATTEST:



Executive Secretary

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on January **22**, 1998, copies of the foregoing document were served upon the parties by United States Mail with sufficient postage thereon to carry the same to their destinations, properly addressed as follows:

Guy Hicks, Esquire, BellSouth Telecommunications, Inc., 333 Commerce Street, Suite 2101, Nashville, TN 37201;

Bennett Ross, Esquire, BellSouth Telecommunications, Inc., 675 West Peachtree Street, Suite 4300, Atlanta, GA 30375;

Dana Shaffer, Esquire, NextLink, 105 Malloy Street, #300, Nashville, TN 37201;

Alaine Miller, Esquire, NextLink, 155 - 108th Ave., NE, Suite 810, Bellevue, WA 98004;

H. LaDon Baltimore, Esquire, Farrar & Bates, 211 Seventh Avenue North, Suite 320, Nashville, TN 37219-1823;

Claire Daly, LDDS WorldCom, 201 Energy Parkway, Suite 200 Lafayette, LA 70508;

Douglas W. Kinkoph, LCI International, 8180 Greensboro Dr., Suite 800, McLean, VA 22101; and

Charles B. Welch, Esquire, Farris, Mathews, Gilman, Branan & Hellen, PLC, 511 Union Street, Suite 2400, Nashville, TN 37219;

Henry Walker, Esquire, Boulton, Cummings, Connors & Berry, 414 Union St., #1600, P. O. Box 198062, Nashville, TN 37219-8062;

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Jon E. Hastings, Esquire, Boulton, Cummings, Connors & Berry, 414 Union St., #1600, P. O. Box 198062, Nashville, TN 37219-8062;

Val Sanford, Esquire, Gullett, Sanford & Robinson, 230 Fourth Avenue North, 3d Floor, Nashville, TN 37219-8888;

James Lamoureux, Esquire, AT&T Communications of the South Central States, Inc., 1200 Peachtree St., NE Atlanta, GA 30309;

Vincent Williams, Esquire, and **Vance Broemel**, Esquire, Consumer Advocate Division, Office of the Attorney General, Esquire, 426 5th Avenue, N., 2nd Floor, Nashville, TN 37243;

Susan Davis Morley, Esquire, Wiggins & Villacorta, P.A., 501 East Tennessee St., P.O. Drawer 1657, Tallahassee, FL 32302;

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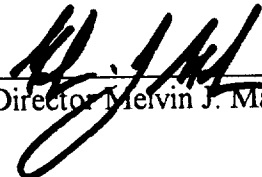
Michael McRae, Sr. Regulatory Counsel - TCG MidSouth, Inc., 2 Lafayette Centre, 1133 21st Str., Suite 400, Washington, D.C. 20036;

Enrico C. Soriano, Esquire, and **Jonathan E. Canis**, Esquire, Intermedia Communications, Kelley, Drye & Warren, 1200 19th Street, N.W., Suite 500, Washington, D.C. 20036;

Donald L. Scholes, Esquire, Communication Workers of America, AFL-CIO, Branstetter, Kilgore, Stranch & Jennings, 227 Second Ave. North, Nashville, TN 37219;

Andrew O. Isar, Tennessee Resellers Association, 4312 92nd Ave. NW, Gig Harbor, WA 98335; and

Dennis McNamee, Esquire, Tennessee Regulatory Authority, 460 James Robertson Parkway, Nashville, TN 37243-0505.


Director Melvin J. Malone

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American Communications Systems, Inc. - Henry Walker, Esquire, Boulton, Cummings, Conners & Berry, 414 Union St., #1600, P. O. Box 198062, Nashville, TN 37219-8062;

MCI Telecommunications Corporation - Martha P. McMillin, Esquire, 780 Johnson Ferry Road, Suite 700, Atlanta, GA 30342, and Jon E. Hastings, Esquire, Boulton, Cummings, Conners & Berry, 414 Union St., #1600, P. O. Box 198062, Nashville, TN 37219-8062;

AT&T Communications of the South Central States, Inc. - Val Sanford, Esquire, Gullett, Sanford & Robinson, 230 Fourth Avenue North, 3d Floor, Nashville, TN 37219-8888, and James Lamoureux, Esquire, 1200 Peachtree St., NE Atlanta, GA 30309;

Consumer Advocate Division, Office of the Attorney General - Vincent Williams, Esquire, 426 5th Avenue, N., 2nd Floor, Nashville, TN 37243.

I. Parties to the Proceeding

In its March 21, 1997, Order Instituting Formal Inquiry and Adopting Procedure (the "Order"), the TRA resolved that the companies that filed comments in response to the Informal Section 271 Investigation and Report² conducted by the TRA Staff were deemed parties to this proceeding. Although LCI International Telecom Corporation ("LCI") filed a Petition for Leave to Intervene in this proceeding, the Hearing Officer advised counsel for LCI that the Petition was unnecessary because LCI filed comments in response to the

² On December 17, 1996, the Directors of the TRA requested the TRA Staff to conduct an informal investigation into BellSouth's entry into the long distance market in Tennessee. Comments received from the Consumer Advocates Division, BellSouth, and certificated facilities-based providers of local telephone service in Tennessee were included in the TRA Staff's Informal Investigation and Report, which was submitted to the Directors on February 18, 1997.

Informal Section 271 Investigation and Report and is thereby deemed a party to this proceeding. Therefore, it is the recommendation of the Hearing Officer that no action be taken on LCI's Petition for Leave to Intervene.³

At the Status Conference, counsel for BellSouth proposed that BellSouth Long Distance, Inc. ("BSLD") be added as a party to this proceeding. AT&T commented that BSLD should be represented during the proceedings to the extent BellSouth and BSLD are separate corporations. Counsel for MCI objected to BellSouth and BSLD filing separate testimony so as to prevent their having "two bites of the apple." Counsel for ACSI commented that BellSouth and BSLD are "one company" and as such should only have "a single spokesperson" in this proceeding.

The Hearing Officer was informed at the Status Conference that counsel for BSLD was present at the commencement of the Status Conference but had departed before this issue arose. Although counsel for BSLD was present at the Status Conference, he chose, for whatever reason, not to seek to intervene as a party. The Directors of the TRA have already established the method for intervening in this proceeding. If BSLD desires to attempt to become a party to this case, it may seek intervention like any other interested party.

II. Contents of the Record

There were no objections to including the TRA Staff's Informal Section 271 Investigation and Report in the record in this docket. It was also proposed that the

³ At this time, the parties to this proceeding are as follows: American Communications Systems, Inc. ("ACSI"), AT&T Communications of the South Central States, Inc. ("AT&T"), BellSouth Telecommunications, Inc. ("BellSouth"), the Consumer Advocate Division ("CAD"), Intermedia Communications ("Intermedia"), LDDS WorldCom ("LDDS"), LCI International Telecom Corporation ("LCI"), MCI Telecommunications Corporation ("MCI"), NextLink, Sprint Communications Company L. P. ("Sprint"), and Time Warner Communications of the Mid South, L.P. ("Time Warner").

testimony, evidence, orders and other documents filed in *In re: Interconnection Agreement Negotiations Between AT&T Communications of the South Central States, Inc. and BellSouth Telecommunications, Inc. Pursuant to 47 U.S.C. § 252*, Docket No. 96-01152; *In re: Petition of MCI Telecommunications Corporation for Arbitration of Certain Terms and Conditions of a Proposed Agreement with BellSouth Telecommunications, Inc. Concerning Interconnection and Resale Under the Telecommunications Act of 1996*, Docket No. 96-01271; *In re: Petition by Sprint Communications Company, L.P. for Arbitration of Interconnection with BellSouth Telecommunications, Inc. Under the Telecommunications Act of 1996*, Docket No. 96-01411 be made a part of the record in this docket. None of the parties objected to this proposal. The CAD, however, stated that since it was not a party to the aforementioned arbitration proceedings that it would need time to consider this proposal. The CAD requested time to reflect upon the proposal and perhaps to have the opportunity to review the records of the arbitration proceedings. The Hearing Officer reserved deciding the issue of whether the aforementioned dockets should be included in the record in this proceeding until after the CAD had an opportunity to file a written recommendation. The Hearing Officer requested that the CAD file such recommendation on or before April 10, 1997. To date, the CAD has not filed any such recommendation or an extension of time in which to do the same. It is the recommendation of the Hearing Officer that the TRA Staff's Informal Section 271 Investigation and Report, including the responses of ACSI and Intermedia, and the final orders from the aforementioned arbitration proceedings be made a part of the record in this docket. Counsel for AT&T is directed to consult with the parties to this proceeding to determine if a Confidentiality Agreement is necessary. If it is determined

that a Confidentiality Agreement is necessary, counsel for AT&T shall prepare the same for execution by the parties.

III. Discovery

The Hearing Officer recommends that the TRA Staff be permitted to serve discovery requests upon BellSouth and any other party to this proceeding any time after March 21, 1997, the date of the order initiating this proceeding. None of the parties objected to this recommendation. The parties will remain under a continuing, good faith obligation to supplement their responses to the Staff's discovery requests. The CAD requested at the Status Conference that it be permitted to serve discovery requests upon BellSouth. None of the parties objected to the request of the CAD. It is the recommendation of the Hearing Officer that the CAD be permitted to submit discovery requests upon BellSouth after the date upon which BellSouth files its 90-day notice with the TRA. All discovery requests and all responses thereto shall be timely served upon all parties to this proceeding.

IV. Threshold Legal Issues⁴

Section 271(c) of the Act establishes two (2) routes for Bell Operating Companies ("BOCs") to enter the in-region interLATA market -- the so-called "Track A" option under Section 271(c)(1)(A) and the "Track B" option under Section 271(c)(1)(B). While BellSouth has the prerogative to proceed under Track A, it conceded in response to the TRA Staff's Informal Section 271 Investigation and Report and again at the Status Conference that, in its opinion, it could not proceed under Track A. Some of the parties asserted that Track B is not available to BellSouth in Tennessee and other parties asserted that Track A is

⁴ The parties were given the opportunity at the Status Conference to raise any legal issues that they wished to brief in addition to the Track A, Track B, and permanent cost based rates issues. No other issues were raised by the parties.

not available to BellSouth in Tennessee. It was also argued that BellSouth cannot be granted in-region interLATA authority in Tennessee until the TRA establishes "permanent" cost based rates.

The Hearing Officer directed the parties to submit legal briefs on the aforementioned issues.⁵ Briefs must be filed with the TRA no later than noon on April 25, 1997. The parties may file reply briefs that do not exceed five (5) pages in length, double spaced.⁶ Reply briefs must be filed with the TRA no later than noon on May 2, 1997. Any reply briefs filed after noon on May 2, 1997, will be returned. The parties are directed to provide the TRA with copies of any authority cited in the briefs, particularly the relevant legislative history, to the extent such authorities are not readily available to the agency. It is the recommendation of the Hearing Officer that the Directors of the TRA hear oral arguments on the briefs at a time later determined.

V. Advance Notice of BellSouth's Section 271 Filing

In a letter to the TRA dated April 1, 1997, counsel for BellSouth agreed that BellSouth would provide the TRA at least ninety (90) days' advance notice before an application is filed with the Federal Communications Commission ("FCC") under Section 271 of the Act for authority to provide interLATA services in Tennessee. At the Status Conference, counsel for BellSouth confirmed BellSouth's agreement to provide the TRA with this advance notice. It is the recommendation of the Hearing Officer that contemporaneously with this advance notice, BellSouth shall furnish the TRA, and all parties of record in this proceeding, all evidence and information, of whatever nature, that it will rely

⁵ The Hearing Officer requested the parties to cite sufficient support when making conclusory or authoritative statements.

⁶ Briefs should be written in no less than a 12 point font size.

upon before the FCC in support of the Section 271 application.⁷ BellSouth agreed to act in good faith in providing the aforementioned documentation to the TRA and in updating any material changes, revisions or additions to said documentation.⁸

VI. Filing of FCC Application with the TRA

The Hearing Officer recommends that no later than thirty-five (35) days after BellSouth provides the TRA the requisite advance notice of the intent to file with the FCC, BellSouth shall file with the TRA a copy of the Section 271 application to be filed with the FCC.⁹ In addition, the Hearing Officer recommends that this supporting documentation shall be filed with the TRA in the same format as it will be filed with the FCC. After filing said document(s), BellSouth shall remain under a good faith continuing obligation to update its Section 271 application with respect to any changes, revisions, or additions.

VII. Schedule of the Proceedings

Subsequent to BellSouth filing its 90-day notice with the TRA, the following schedule is recommended by the Hearing Officer:

⁷ After some prodding from the Hearing Officer, BellSouth agreed to this recommendation.

⁸ According to BellSouth, it contemplates filing its 271 application under Track B. Nonetheless, BellSouth acknowledges that a change in circumstances could result in BellSouth filing its 271 application under Track A. BellSouth agreed to provide the TRA and the parties immediate notice if it changes Tracks at anytime after the initial 90-day notice. It is the recommendation of the Hearing Officer that should BellSouth notify the TRA in its initial 90-day notice that it is filing under one Track, and later notifies the TRA that it has decided to proceed instead under the opposite Track, the 90-day period will start anew at the time of the second notification. This recommendation is premised, among other things, upon a recognition that such a scenario is tantamount to a new filing.

⁹ At the time that BellSouth files its Section 271 application pursuant to Section VI of this Report and Recommendation, it is recognized that the possibility exists that some documentation included in the application may have been filed previously with the 90-day notice. To the extent that such documentation previously filed has changed in any manner, such as form, content, substance, etc., said documentation must be refiled in its entirety, with the changes and modifications redlined. If, however, the changes and modifications constitute new arguments that make the previously filed documentation irrelevant or there is a substantial difference in volume, redlining is not required.

1. Legal briefs, as requested in Section IV herein, shall be filed by the parties on or before noon April 25, 1997. Reply briefs, not exceeding five (5) pages in length, double spaced, may be filed on or before noon May 2, 1997.

2. BellSouth shall provide the TRA with 90 days advance notice before filing its Section 271 application with the FCC.

3. No later than thirty-five (35) days after BellSouth provides the TRA its 90-day notice, BellSouth shall file with the TRA a copy of the Section 271 application to be filed with the FCC.

4. BellSouth has informed the TRA and the parties that it intends on filing a draft of its statement of generally available terms at the time that it files its 90-day notice with the TRA.

5. Thirty-five (35) days after BellSouth files its 90-day notice, BellSouth has agreed to file its final statement of generally available terms with the TRA.¹⁰

6. Forty-five (45) days after BellSouth files its 90-day notice, all parties other than BellSouth shall file their direct and rebuttal pre-filed testimony.¹¹

7. Ten (10) days after the filing of direct and rebuttal pre-filed testimony by parties other than BellSouth, BellSouth shall file rebuttal testimony. It is the recommendation of the Hearing Officer that surrebuttal testimony not be permitted.

¹⁰ BellSouth represented at the Status Conference that its final statement of generally available terms will be the same as the draft of its statement of generally available terms. BellSouth shall redline any changes from the draft to the final.

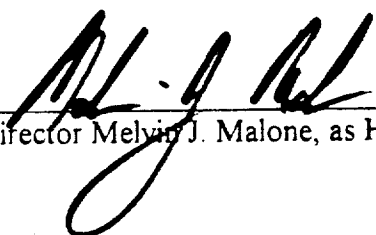
¹¹ Recognizing that some witnesses may testify on a host of issues within a single, multi-page document, the parties, including BellSouth, are directed, when filing any testimony, in whatever form, to identify the specific pages on which each of the issues a witness addresses are addressed.

8. A Pre-Hearing Conference will be held within five (5) days after the filing of rebuttal testimony by BellSouth (or as soon thereafter as is practicable).

9. All filings made pursuant to this Report and Recommendation shall be made on or before noon on the date due.

10. The TRA reserves the right to modify this schedule at any time.¹²

Respectfully submitted,



Director Melvin J. Malone, as Hearing Officer

ATTEST:



Executive Secretary

¹² Many of the dates triggered by the filing of the 90-day notice may fall on weekends. The TRA will issue a calendar in this docket after BellSouth files its 90-day notice.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on April 19, 1997, the foregoing document was served upon the parties by United States Mail with sufficient postage thereon to carry the same to their destinations, properly addressed as follows:

Guy Hicks, Esquire, BellSouth Telecommunications, Inc., 333 Commerce Street, Suite 2101, Nashville, TN 37201;

Bennett Ross, Esquire, BellSouth Telecommunications, Inc., 675 West Peachtree Street, Suite 4300, Atlanta, GA 30375;

Dana Shaffer, Esquire, NextLink, 105 Malloy Street, #300, Nashville, TN 37201;

Alaine Miller, Esquire, NextLink, 155 - 108th Ave., NE, Suite 810, Bellevue, WA 98004;

H. LaDon Baltimore, Esquire, Farrar & Bates, 211 Seventh Avenue North, Suite 320, Nashville, TN 37219-1823;

Charles B. Welch, Esquire, Farris, Mathews, Gilman, Branan & Hellen, PLC, 511 Union Street, Suite 2400, Nashville, TN 37219;

Henry Walker, Esquire, Boulton, Cummings, Conners & Berry, 414 Union St., #1600, P. O. Box 198062, Nashville, TN 37219-8062;

Martha P. McMillin, Esquire, MCI Telecommunications Corporation, 780 Johnson Ferry Road, Suite 700, Atlanta, GA 30342;

Jon E. Hastings, Esquire, Boulton, Cummings, Conners & Berry, 414 Union St., #1600, P. O. Box 198062, Nashville, TN 37219-8062;

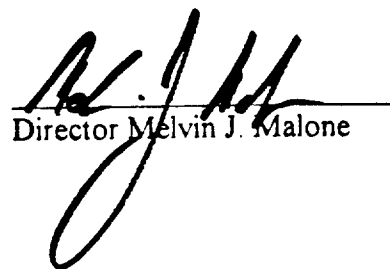
Val Sanford, Esquire, Gullett, Sanford & Robinson, 230 Fourth Avenue North, 3d Floor, Nashville, TN 37219-8888;

James Lamoureux, Esquire, AT&T Communications of the South Central States, Inc., 1200 Peachtree St., NE Atlanta, GA 30309;

Vincent Williams, Esquire, Consumer Advocate Division, Office of the Attorney General, Esquire, 426 5th Avenue, N., 2nd Floor, Nashville, TN 37243;

Susan Davis Morley, Esquire, Wiggins & Villacorta, P.A., 501 East Tennessee St., P.O. Drawer 1657, Tallahassee, FL 32302.

**Ed Phillips, Esquire, Tennessee Regulatory Authority, 460 James Robertson
Parkway, Nashville, TN 37243-0505.**



Director Melvin J. Malone

BEFORE THE TENNESSEE REGULATORY AUTHORITY

June 25, 1997

NASHVILLE, TENNESSEE

In Re:

BellSouth Telecommunications, Inc.'s Entry)	
Into Long Distance (InterLATA) Service)	Docket No.
in Tennessee Pursuant to Section 271 of the)	97-00309
Telecommunications Act of 1996)	

ORDER ADOPTING REPORT OF HEARING OFFICER

On April 18, 1997, a Report and Recommendation ("Report") arising from a Pre-Hearing Conference held in the above-captioned matter presided over by Director Melvin J. Malone was submitted to the Directors of the Tennessee Regulatory Authority ("Authority") for approval. The approval of the Report was considered by the Directors at a regularly scheduled Authority Conference held on April 29, 1997.

After reviewing the Report of the Hearing Officer, the Directors of the Authority voted unanimously to adopt the Report as submitted.

IT IS THEREFORE ORDERED:

- 1) That the Report and Recommendation of the Hearing Officer is hereby adopted and approved as filed;
- 2) That the schedule and resolution of certain procedural matters set forth in the Report and Recommendation of the Hearing Officer shall be incorporated in this Order as though copied verbatim herein;

3) That any party aggrieved with the Authority's decision in this matter may file a Petition for Reconsideration with the Authority within ten (10) days from and after the date of this Order; and

4) That any party aggrieved with the Authority's decision in this matter has the right of judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle Section, within sixty (60) days from and after the date of this Order.


CHAIRMAN


DIRECTOR

ATTEST:


EXECUTIVE SECRETARY

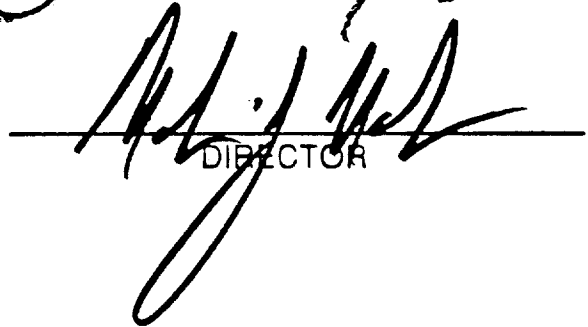

DIRECTOR

EXHIBIT B

PROPOSED PROCEDURAL SCHEDULE FOR 271 PROCEEDING

January 30, 1998	BellSouth agrees to extend under 252(f) until written order issued in Permanent Prices Docket
February 3, 1998	Consideration of Second Report and Recommendation
February 6, 1998	Comments on how TRA should conduct Technical Workshops and Demonstrations
February 10, 1998	Discovery Requests Due
February 24, 1998	Discovery Responses Due
March 5-6, 1998	Technical Workshop - - OSS
March 6 , 1998	Second Set of Discovery Requests Due (only parties issuing a first set of discovery requests may file a second set; second set may consist of no more than 10 questions which must be related to first set of requests)
March 13, 1998	Second Set of Responses Due
March 23-24, 1998	Technical Workshop Performance Measures
March 27, 1998	Pre-filed Direct and Rebuttal Testimony filed by all parties other than BellSouth
April 9, 1998	BellSouth files Rebuttal Testimony
April 24, 1998	Legal Briefs on PCSs as Track A providers (no reply briefs)
May 6-8 <u>and</u> May 11-15, 1998	Hearings
June 1, 1998	Post Hearing Briefs

All filings must be made on or before noon on the day specified.